IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.1073 of 2006

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders

Shri V.N. Morande, Advocate for Petitioner.
Shri N.S. Khubalkar, AGP for R- 1, 4 and 5.
Shri A.M. Ghare, Advocate for R- 2.
Shri P.C. Madkholkar, Advocate for R- 3.

Coram : A.H. Joshi & R.C. Chavan, JJ.
Dated : 25th June, 2007

1. The petition was filed in January 2006 and it came for admission for the first time in March 2006.

2. Affidavit-in-reply was filed by the contesting respondent No.3 on 30-3-2007 bringing on record the permission under Section 37 of Maharashtra Regional and Town Planning Act, by which designation of Site No.175 as reserved for School was modified and construction of shopping complex became permissible.

3. After this modification, an agreement was entered between respondent No.3 and respondent No.2 on 7-3-2007 which was lodged for registration on 16-3-2007. It is seen that this agreement is based on the terms and conditions as were agreed in 1992. These facts pose a puzzle as to whether

Corporation's interest was really protected.

4. We find that the petitioner has not taken steps whatsoever for seeking injunction against the respondent for not proceeding on the contract dated 7-3-2007. It was possible for the petitioner to take steps, however, no steps were taken.

5. Further the petitioner has chosen not to challenge the order/permission for modification of development plan on previous date, however when called upon on this point, the learned Advocate for the petitioner sought time. Today, the learned Advocate for the petitioner has filed purshis stating that the Government order of modification would be challenged separately.

6. In absence of challenge to the modification of development plan in the present petition, purpose of filing of the petition in the present form, frustrates. The acts complained of in this petition can be dealt with under the provisions of Regional & Town Planning Act.

7. Therefore, As observed by us in foregoing para, above, the challenge in the writ petition turns out to be half-hearted, and the interest of the Corporation cannot be protected in this fashion. In this background, we find that no interference is

called for in this petition. Petition is, therefore, dismissed.

8. We clarify that this, however, does not operate as a fetter against appropriate challenges if raised either by the petitioner or by any other person as regards matters referred to hereinbefore.

9. We cannot conclude that public interest was not involved. The amount of Rs.50,000/- deposited by the petitioner in this Court in Civil Application No.2226 of 2007 be refunded to the petitioner as apparently when the petition was filed, actions complained of were not free from being challenged and the petitioner's ostensible object was to protect the interest of the Corporation. Civil Application No.2226 of 2007 is accordingly disposed of.

Judge **Judge**

pdl.